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DEBRA TYLER; WILLIAM WALKER, M.D.
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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13
14 TERRIE KENT,

15 Plaintiff

16 v.

17 CONTRA COSTA COUNTY,
DEPARTMENT OF HEALTH
18 SERVICES, DEBORAH TYLER,
WILLIAM WALKER, M.D., in his official
19 capacity and DOES 1 through 25,
inclusive,

20 Defendants.

No. CV 08 0984 EDL

ANSWER OF DEFENDANTS CONTRA
COSTA COUNTY, DEBORAH TYLER, and
WILLIAM WALKER, M.D.

21 Defendants Contra Costa County (also apparently sued erroneously as "Department of
22 Health Services"), Deborah Tyler and William Walker, M.D., (hereafter jointly "Defendants")
23 in response to Plaintiff's First Amended Complaint ("Complaint"), and admit, deny, answer
24 and allege as follows:

25 ANSWER

- 26
27 1. Responding to the first numbered paragraph of plaintiff's Complaint, Defendants admit
28 the allegations, based on information and belief.
2. Responding to the second numbered paragraph of plaintiff's Complaint, Defendants

ANSWER OF DEFENDANTS CONTRA COSTA COUNTY, DEBORAH TYLER, and
WILLIAM WALKER, M.D.
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1 admit that Defendant Contra Costa County is a public entity, as described in the
2 Government Code, and deny that "Department of Health Services" is a government
3 agency, based on lack of information and belief.

4 3. Responding to the third numbered paragraph of plaintiff's Complaint, Defendants deny
5 the allegations based on lack of information and belief.

6 4. Responding to the fourth numbered paragraph of plaintiff's Complaint, Defendants
7 deny the allegations with respect to Defendant Deborah Tyler and Contra Costa County,
8 and deny the allegations of the second sentence of the paragraph.

9 5. Responding to the fifth numbered paragraph of plaintiff's Complaint, Defendants deny
10 the allegations based on lack of information and belief.

11 6. Responding to the sixth numbered paragraph of plaintiff's Complaint, Defendants deny
12 the allegations of all but the first sentence based on lack of information and belief.

13 7. Responding to the seventh numbered paragraph of plaintiff's Complaint, Defendants
14 admit the allegations.

15 8. Responding to the eighth numbered paragraph of plaintiff's Complaint, Defendants
16 deny the allegations.

17 9. Responding to the ninth numbered paragraph of plaintiff's Complaint, Defendants
18 admit the allegations based on information and belief.

19 10. Responding to the tenth numbered paragraph of plaintiff's Complaint, Defendants
20 admit the allegations based on lack of information and belief.

21 11. Responding to the eleventh numbered paragraph of plaintiff's Complaint, Defendants
22 deny the allegations based on lack of information and belief.

23 12. Responding to the twelfth numbered paragraph of plaintiff's Complaint, Defendants
24 deny the allegations.

25 13. Responding to the thirteenth numbered paragraph of plaintiff's Complaint, Defendants
26 deny the allegations.

27 14. Responding to the fourteenth numbered paragraph of plaintiff's Complaint, Defendants
28 deny the allegations.

- 1 15. Responding to the fifteenth numbered paragraph of plaintiff's Complaint, Defendants
2 deny the allegations based on lack of information and belief.
- 3 16. Responding to the sixteenth numbered paragraph of plaintiff's Complaint, Defendants
4 deny the allegations based on lack of information and belief.
- 5 17. Responding to the seventeenth numbered paragraph of plaintiff's Complaint,
6 Defendants deny the allegations.
- 7 18. Responding to the eighteenth numbered paragraph of plaintiff's Complaint, Defendants
8 deny the allegations based on lack of information and belief.
- 9 19. Responding to the nineteenth numbered paragraph of plaintiff's Complaint, Defendants
10 deny the allegations based on lack of information and belief.
- 11 20. Responding to the twentieth numbered paragraph of plaintiff's Complaint, Defendants
12 deny the allegations.
- 13 21. Responding to the twenty-first numbered paragraph of plaintiff's Complaint,
14 Defendants deny the allegations based on lack of information and belief.
- 15 22. Responding to the twenty-second numbered paragraph of plaintiff's Complaint,
16 Defendants admit the allegations of the first sentence and deny the allegations of the
17 second sentence.
- 18 23. Responding to the twenty-third numbered paragraph of plaintiff's Complaint,
19 Defendants deny the allegations based on lack of information and belief.
- 20 24. Responding to the twenty-fourth numbered paragraph of plaintiff's Complaint,
21 Defendants deny the allegations.
- 22 25. Responding to the twenty-fifth numbered paragraph of plaintiff's Complaint,
23 Defendants deny the allegations based on lack of information and belief.
- 24 26. Responding to the twenty-sixth numbered paragraph of plaintiff's Complaint,
25 Defendants deny the allegations.
- 26 27. Responding to the twenty-seventh numbered paragraph of plaintiff's Complaint,
27 Defendants deny the allegations .
- 28 28. Responding to the twenty-eighth numbered paragraph of plaintiff's Complaint,

- 1 Defendants deny the allegations based on lack of information and belief.
- 2 29. Responding to the twenty-ninth numbered paragraph of plaintiff's Complaint,
- 3 Defendants dispute plaintiff's characterization of the "Agreement" described in
- 4 numbered paragraph and therefore deny the allegations based on lack of information
- 5 and belief.
- 6 30. Responding to the thirtieth numbered paragraph of plaintiff's Complaint, Defendants
- 7 dispute plaintiff's characterization of the "Agreement" described in numbered
- 8 paragraph and therefore deny the allegations based on lack of information and belief.
- 9 31. Responding to the thirty-first numbered paragraph of plaintiff's Complaint, Defendants
- 10 dispute plaintiff's characterization of the "Agreement" described in numbered
- 11 paragraph and therefore deny the allegations based on lack of information and belief.
- 12 32. Responding to the thirty-second numbered paragraph of plaintiff's Complaint,
- 13 Defendants dispute plaintiff's characterization of the "Agreement" described in
- 14 numbered paragraph and therefore deny the allegations based on lack of information
- 15 and belief.
- 16 33. Responding to the thirty-third numbered paragraph of plaintiff's Complaint, Defendants
- 17 deny the allegations based on lack of information and belief.
- 18 34. Responding to the thirty-fourth numbered paragraph of plaintiff's Complaint,
- 19 Defendants deny the allegations.
- 20 35. Responding to the thirty-fifth numbered paragraph of plaintiff's Complaint, Defendants
- 21 deny the allegations based on lack of information and belief.
- 22 36. Responding to the thirty-sixth numbered paragraph of plaintiff's Complaint, Defendants
- 23 deny the allegations based on lack of information and belief.
- 24 37. Responding to the thirty-seventh numbered paragraph of plaintiff's Complaint,
- 25 Defendants deny the allegations.
- 26 38. Responding to the thirty-eighth numbered paragraph of plaintiff's Complaint,
- 27 Defendants deny the allegations.
- 28 39. Responding to the thirty-ninth numbered paragraph of plaintiff's Complaint,

1 Defendants deny the allegations based on lack of information and belief.

2 40. Responding to the fortieth numbered paragraph of plaintiff's Complaint, Defendants
3 deny the allegations based on lack of information and belief.

4 41. Responding to the forty-first numbered paragraph of plaintiff's Complaint, Defendants
5 deny the allegations.

6 42. Responding to the forty-second numbered paragraph of plaintiff's Complaint,
7 Defendants deny the allegations.

8 43. Responding to the forty-third numbered paragraph of plaintiff's Complaint, Defendants
9 deny the allegations.

10 44. Responding to the forty-fourth numbered paragraph of plaintiff's Complaint,
11 Defendants deny the allegations.

12 45. Responding to the forty-fifth numbered paragraph of plaintiff's Complaint, Defendants
13 deny the allegations.

14 46. Responding to the forty-seventh numbered paragraph of plaintiff's Complaint,
15 Defendants deny the allegations that Plaintiff is entitled to any damages at all.

16 47. Responding to the forty-fifth numbered paragraph of plaintiff's Complaint, Defendants
17 deny the allegations, and deny that public entity defendants can be held liable for
18 punitive damages under any circumstances.

19 48. Responding to the forty-fifth numbered paragraph of plaintiff's Complaint, Defendants
20 deny the allegations of the first sentence based on lack of information and belief, and
21 deny the allegations of the second sentence.

22
23 AFFIRMATIVE DEFENSES

24 1. AS A FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
25 Complaint, and each and every cause of action set forth therein, Defendants allege that
26 the first amended complaint and each cause of action contained therein fails to state any
27 claim upon which relief can be granted.

28 2. AS A SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said

1 Complaint, and each and every cause of action set forth therein, Defendants allege that
2 they are shielded from any liability by public entity and statutory immunities.

3 3. AS A THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
4 Complaint, and each and every cause of action set forth therein, Defendants allege that
5 plaintiff's claims are barred by the doctrines of waiver, estoppel and laches.

6 4. AS A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
7 Complaint, and each and every cause of action set forth therein, Defendants allege that
8 at all times herein mentioned, all actions taken by Defendants and County employees
9 were reasonable under the circumstances and taken under a good faith belief that the
10 actions were lawful and Defendants and County employees are therefore immune under
11 the Good Faith Immunity Doctrine.

12 5. AS A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
13 Complaint, and each and every cause of action set forth therein, Defendants allege that
14 they are immune from liability, and cannot be held liable for any injury that may have
15 been sustained by plaintiff, which injury Defendants specifically deny, and that
16 Defendants and employees were at all relevant times performing duties in an
17 objectively reasonable manner, within lawful responsibilities, and are therefore immune
18 from suit.

19 6. AS A SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
20 Complaint, and each and every cause of action set forth therein, Defendants allege that
21 each claim and cause of action is barred by the failure of plaintiff to exhaust all
22 available administrative remedies, including but not limited to those available through
23 Defendants Contra Costa County.

24 7. AS A SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
25 Complaint, and each and every cause of action set forth therein, Defendants allege that
26 in the event that the trier of fact finds any liability on the part of these answering
27 Defendants, which liability is herein denied, answering Defendants will seek the benefit
28 of several liability for non-economic damages as provided in Civil Code sections 1431

1 through and including 1431.5.

2 8. AS AN EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
3 Complaint, and each and every cause of action set forth therein, public entity
4 Defendants allege that they cannot be found liable for punitive damages pursuant to
5 Government Code section 818.

6 9. AS A NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
7 Complaint, and each and every cause of action set forth therein, Defendants allege that
8 as to any state law claims, each cause of action is barred under the provisions of
9 Government Code section 910, et seq., and Code of Civil Procedure section 313 for
10 failure to comply with requirements of filing a timely and sufficient tort claim and
11 failure to set forth in any tort claim filed the facts and theories that are set forth in the
12 pending Complaint.

13 10. AS A TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
14 Complaint, and each and every cause of action set forth therein, Defendants allege that
15 the negligence of others, if any, was greater than the negligence of Defendants, if in fact
16 and Defendant was negligent, and the liability, if any, of said answering Defendants
17 should be diminished in direct proportion to the fault, if any, attributable to others as
18 compared with that of said answering Defendants.

19 11. AS AN ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
20 said Complaint, and each and every cause of action set forth therein, Defendants allege
21 that they are immune pursuant to Government Code sections 815 and 815.2.

22 12. AS A TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
23 Complaint, and each and every cause of action set forth therein, Defendants allege they
24 are immune pursuant to Government Code section 815.6 for exercise of any mandatory
25 duty when reasonable diligence was used in discharging that duty.

26 13. AS A THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
27 said Complaint, and each and every cause of action set forth therein, Defendants allege
28 that they are immune pursuant to Government Code section 818.2 for adopting or

1 failing to adopt an enactment or by failing to enforce any law.

2 14. AS A FOURTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
3 said Complaint, and each and every cause of action set forth therein, Defendants allege
4 that they are immune pursuant to Government Code section 818.8 for
5 misrepresentations.

6 15. AS A FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
7 Complaint, and each and every cause of action set forth therein, Defendants allege that
8 they are immune pursuant to Government Code sections 820.2 and 815.2 for exercise of
9 discretion.

10 16. AS A SIXTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
11 Complaint, and each and every cause of action set forth therein, Defendants allege that
12 they are immune pursuant to Government Code sections 820.4 and 815.2 for the
13 execution or enforcement of any law.

14 17. AS A SEVENTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
15 said Complaint, and each and every cause of action set forth therein, Defendants allege
16 that they are not liable to the plaintiff pursuant to Government Code sections 820.6 and
17 815.2.

18 18. AS A EIGHTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
19 said Complaint, and each and every cause of action set forth therein, Defendants allege
20 that any and all culpable acts, omissions, or conduct, if any, which allegedly caused the
21 injuries and damages sought in the Complaint on file in this action, were caused by third
22 parties and therefore answering Defendants are not liable to the plaintiff pursuant to
23 Government Code sections 820.8 and 815.2.

24 19. AS A NINETEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
25 said Complaint, and each and every cause of action set forth therein, Defendants deny
26 they discriminated in any way against Plaintiff, and instead allege that legitimate, non-
27 discriminatory, valid, reasonable and good faith reasons supported each and every
28 decision made by Defendants and its employees in the exercise of legitimate managerial

1 discretion.

2 20. AS A TWENTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
3 Complaint, and each and every cause of action set forth therein, Defendants allege that
4 they are not liable to the plaintiff pursuant to Government Code sections 815.2 and
5 821.6.

6 21. AS A TWENTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
7 said Complaint, and each and every cause of action set forth therein, Defendants allege
8 that they are not liable to the plaintiff pursuant to Government Code sections 815.2 and
9 822.2.

10 22. AS A TWENTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
11 to said Complaint, and each and every cause of action set forth therein, Defendants
12 allege that they are immune pursuant to Civil Code section 47(a) and Government Code
13 section 815.2

14 23. AS A TWENTY-THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
15 said Complaint, and each and every cause of action set forth therein, Defendants allege
16 that non-discriminatory, business reasons warranted actions taken with respect to
17 plaintiff's employment as well as the employment of others.

18 24. AS A TWENTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
19 to said Complaint, and each and every cause of action set forth therein, Defendants
20 allege that it and its employees are immune from liability pursuant to the provisions of
21 sections 810 through 895.8 of the California Government Code.

22 25. AS A TWENTY-FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
23 said Complaint, and each and every cause of action set forth therein, Defendants allege
24 that plaintiff's action, and claims alleged therein, are barred by the provisions of Code
25 of Civil Procedure section 340(3), 342, and every other limitations period applicable to
26 each and every cause of action alleged in the complaint.

27 26. AS A TWENTY-FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
28 said Complaint, and each and every cause of action set forth therein, Defendants allege

1 that Plaintiff cannot obtain as a remedy under the allegations asserted any of statutory,
2 punitive damages, prejudgment interest or other non-compensatory damages.

3 27. AS A TWENTY-SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
4 said Complaint, Defendants allege that the complaint, and causes of action alleged
5 therein are barred by the doctrines of collateral estoppel and res judicata.

6 28. AS A TWENTY-SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE
7 DEFENSE to said Complaint, Defendants allege that any and all steps taken with
8 respect to plaintiff and/or other employees were taken for legitimate, non-discriminatory
9 business reasons.

10 29. AS A TWENTY-EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
11 to said Complaint, Defendants allege that Plaintiff is guilty of unclean hands and
12 therefor cannot recover in this lawsuit.

13 30. AS A TWENTY-NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
14 said Complaint, Defendants allege that the actions alleged by Plaintiff in the Complaint
15 do not give rise to protection under any "whistleblowing" statute.

16 31. AS A THIRTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to said
17 Complaint, Defendants allege that they and County employees acted at all times in good
18 faith, and without any discriminatory motive or animus.

19 32. AS A THIRTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
20 said Complaint, and each and every cause of action set forth therein, Defendants allege
21 that Plaintiff herself was responsible for any alleged damage or injury, which damage
22 and injury are specifically denied by Defendants.

23 33. AS A THIRTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
24 to said Complaint, Defendants allege that the complaint, and causes of action alleged
25 therein are barred the failure of Plaintiff to comply with statutory requirements and
26 prerequisites to support the causes of action alleged, and each of them.

27 34. AS A THIRTY-THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
28 said Complaint, Defendants allege that Plaintiff independently and voluntarily

1 relinquished rights under any contract alleged, and therefore the instant claims are
2 barred.

3 35. AS A THIRTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE
4 to said Complaint, Defendant and its employees were justified and privileged in doing
5 each of the things alleged to have been done, to the extent such things were done at all.

6 36. AS A THIRTY-FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE to
7 said Complaint, Defendants asserts that Plaintiff's claims are barred, in whole or in part,
8 by virtue of the provisions of the California Workers' Compensation Act, Labor Code
9 section 3600, et seq., which provides the exclusive remedy for Plaintiff's claims.
10

11 WHEREFORE, Defendants prays for the following relief:

- 12 1. That plaintiff take nothing by her Complaint and that Defendants be dismissed;
 - 13 2. That Defendants be awarded costs;
 - 14 3. That Defendants be awarded attorneys fees; and
 - 15 4. For such other relief that the court deems just and proper.
- 16

17 JURY REQUEST

18 Defendants requests a trial by jury.
19
20

21 DATED: May 2, 2008

SILVANO B. MARCHESI
COUNTY COUNSEL

22
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24 By: 

JANET L. HOLMES
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CONTRA COSTA COUNTY;
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